

APPLICANTS:
Venerando & Maria Calderon

REQUEST: A special exception to permit
a personal care boarding home in the
Agricultural District

HEARING DATE: March 23, 2005
and May 18, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5475

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Venerando & Maria Calderon

LOCATION: 1302 Quaker Church Road, Street
Tax Map: 18 / Grid: 3F / Parcel: 193
Fifth Election District (5th)

ZONING: AG / Agricultural

REQUEST: A special exception, pursuant to Section 267-53F(8) of the Harford County Code, to permit a personal care boarding home in an Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Venerando and Maria Calderon are the owners of 1302 Quaker Church Road, Street, Maryland. The property was purchased by them approximately four to five years ago, with construction of their five bedroom, three and one-half bath home started about two years ago. The construction of the house was delayed somewhat as a Stream Crossing Permit was required from the Maryland Department of the Environment. The finished home is now 3,400 to 3,600 square feet in size. The Applicants occupied the property in July 2004.

Presently the Applicants and their two children reside at the subject property, which is 10.29 acres in size and is accessed off Quaker Church Road by a paved driveway.

Mr. Calderon testified that he and his wife are seeking permission for an assisted living facility in order to care for up to four residents. These residents will be living on the first floor of the property in two bedrooms, each of which is 17 feet by 15 feet in dimension.

Both Mr. and Mrs. Calderon are nurses, with Mrs. Calderon working at Johns Hopkins Hospital, and Mr. Calderon at St. Agnes and Good Samaritan. The parties testified they are well able to care for elderly individuals in need of assistance. Mr. Calderon will work part-time at his employment, and will devote a substantial portion of his other time to caring for the residents. Mrs. Calderon will also be assisting in their care. The Applicants will hire one full-time employee.

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Mr. and Mrs. Calderon indicated that most of the residents would be Level 1, with perhaps a Level 2 resident on occasion. Level 1 are ambulatory residents; Level 2 are those individuals in need of some moderate assistance. These individuals will not be driving. They will be able to walk outside and around the lawn.

The Applicants have not yet applied to the State Health Department for their permit. They are seeking their zoning certificate first.

Mr. Calderon indicated that he has space for seven to eight cars located in his existing garage and along the driveway. There should be no commercial deliveries to the property. Mrs. Calderon says that only one house that can be seen from the property, and that is about 500 feet away.

The Applicants also stated they will most likely construct a wheelchair ramp and deck to the rear of their house in order to make the house wheelchair accessible.

The Applicants were cross-examined by Steven McKeon, who resides at 3583 Mill Green Road. Mr. McKeon owns property which extends to Quaker Church Road, including a 35 acre parcel immediately adjacent to the Applicants.

Mr. McKeon was concerned about the Stream Crossing Permit. He did not believe the Permit should allow the use of the residence as proposed by the Applicants. The Applicants submitted a copy of the Permit and showed it to Mr. McKeon. The Applicants indicated that the cost of installing the required culvert in the stream was about \$35,000.00, and they were in compliance with all Maryland Department of the Environment regulations.

Mr. McKeon also questioned the minimum setback to the rear of the property. The house is shown on the survey as "80" feet" from the rear property line. Mr. McKeon testified that the minimum setback is 80 feet and anything less is not acceptable.

Mr. McKeon is also concerned about the rear yard not being fenced. This will allow residents to wonder off of the Calderon property and onto adjoining farm fields. This would cause a potential liability problem for those owners and operators of the adjoining farms. Mr. McKeon also questioned the original plan of the house, which received a building permit as a five bedroom home. It has now been put to a different use.

Joseph Cadden, 1309 Quaker Church Road then cross-examined Mr. Calderon. Mr. Cadden pointed out that the house is located on the high side of the Calderon property as most of the subject property is in a flood plain. He also questioned the capacity of the existing septic system to service the proposed use. He also was concerned about the impact on Quaker Church Road by traffic to the proposed use. Quaker Church Road is a dirt road. He also feels any commercial traffic, and any increased residential traffic, would significantly and adversely impact Quaker Church Road.

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During the course of Mr. Cadden's questioning of Mr. Calderon it became apparent that the property had not been properly posted. The hearing was then continued in order to allow the Harford County Department of Planning and Zoning to re-post the property in a proper location. The hearing was accordingly adjourned at that point.

At the continuation of the hearing on May 18, 2005, Mrs. Calderon made a lengthy statement describing in more detail her background and that of her husband, their plans for the proposed assisted living facility, and their reasons for making the application.

Mrs. Calderon stated that she has been a registered nurse for 26 years, currently working at the Marburg Pavilion, Johns Hopkins Hospital. She has been nominated almost every year for nurse of the year. She is known as a compassionate and caring nurse.

Mr. Calderon has been a registered nurse for 24 years, and has many certifications. He worked at Church Home Hospital for 10 years in the oncology unit until the hospital closed in the year 2000. He now works for Good Samaritan Hospital. He has been there for 5 years. He has a good reputation at Good Samaritan Hospital.

The Applicants' children are 18 and 13 years of age. The Applicants believe that now is an appropriate time to begin their assisted living business, which they have desired for many years. Mrs. Calderon feels that she and her husband, with their many years of combined nursing experience, will provide a good living environment for elderly individuals.

Mrs. Calderon explained that her property is 10 acres in size with five bedrooms. The upstairs of the premises has three bedrooms with two full baths, for family use. The residents will stay on the first floor where are located two bedrooms, one additional small room, one full bath and one powder room. The house has other improvements, including a basement with a pool table, game tables, and movie room.

Mr. and Mrs. Calderon will provide the following assistance for the residents: assistance with activity of daily living, including eating, grooming, bathing, oral hygiene, walking and/or getting around, dressing with weather appropriate clothing. The Applicants will also provide meals and snacks on a daily basis and will accommodate special diets. The Calderon's will do the laundry and housekeeping for the residents. The residents' health care will be monitored. The Calderon's will help schedule appointments and provide transportation to medical care providers. Social opportunities and activities will also be arranged.

Mrs. Calderon closed her statement by stating that she and her husband love what they are doing and for that reason have decided to get into this business.

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Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune indicated that, in the Department's opinion, the Applicants meet or exceed all applicable standards. The Applicants clearly meet the minimum lot size requirements of two acres, and have demonstrated that they have sufficient parking on-site. The density requirements are met as the four residents proposed are substantially less than that which the Code allows.

All considerations of Section 267-9I are met. The dwelling itself has substantial separation from other surrounding properties. The amount of traffic will be very limited. In Mr. McClune's opinion the traffic generated by these types of assisted living facilities is almost negligible. Mr. McClune feels there would be no adverse impact from the proposal. The road conditions of Quaker Church Road, a County road, are good. Furthermore, the Health Department has reviewed the proposal and found there to be adequate on-site well and septic capacity.

In addressing the concerns already expressed by the neighbors, Mr. McClune stated that a special exception is considered by Harford County Code to be compatible with those uses in the district proposed, provided there is no greater impact than there would be if located elsewhere within the district. The Department can find no greater impact at this location than at another location.

In addressing the stream crossing Mr. McClune indicated that to his knowledge an appropriate permit was issued for the stream crossing.

In opposition testified Doris Bogdan, who expressed her concern that the proposal would affect her property values.

Next in opposition testified Joe Cadden, who expressed his opinion that the illumination coming from the house impacts the other properties in the neighborhood. He indicated that the Applicants' lighting lights up the whole neighborhood. In response Mrs. Calderon indicated that she and her husband were working to develop a plan to better schedule outside lighting. The lights are now on because either Mr. or Mrs. Calderon often return late at night, and for safety purposes they keep the house lights on until then. They are looking into putting a timer on the lights, which should mitigate that impact.

Next in opposition testified David Bogdan. Mr. Bogdan expressed concerns about the ability of Quaker Church Road to handle traffic. He expressed concerns that with heavy rains Quaker Church Road is at least partially washed-out, which could impact the ability of emergency services personnel from accessing disabled residents of the proposed assisted living facility.

There was no other testimony or evidence given in opposition.

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APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-53F(8) of the Harford County Code which states:

- “(8) Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*
- (a) The proposed use shall be located in a single-family detached dwelling.*
 - (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*
 - (c) Maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.*
 - (d) Adequate off-street parking shall be provided.*
 - (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”*

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants own a 10.29 acre parcel off Quaker Church Road. The property is located in an area in which the prominent land use is agricultural, including crop land, pasture land, and large areas of dense woodland property. Residential uses are scattered throughout. The residence of the Applicants is situated on top of a hill, affording it a good view of the surrounding countryside and, obviously, also causing it to be quite noticeable to neighbors and passers-by.

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The residence itself is relatively large, containing 3,400 to 3,600 square feet, newly built, with five bedrooms, three and one-half bathrooms, family room, game room and movie room. The residence accordingly has a generous amount of habitable space. Certainly, the house is large enough to easily accommodate the Applicants, their two children, and up to the four residents proposed.

It is further found that such a location would afford future residents the opportunity for a good living environment, situated as it is on a large lot, with good view of surrounding properties, open yards, and more than sufficient area for walking and enjoyment of the outside spaces.

In keeping with the relatively rural nature of the area, the nearest home is approximately 500 feet away. The Applicants' property is itself located about 600 feet off of Quaker Church Road, which is unimproved in the location of the Applicants' property.

Despite the generalized concerns of the neighbors, it is found that the proposed use is one which will have little if any impact on the neighborhood. Indeed, the occupation of the subject property by up to four elderly residents will be virtually unnoticeable to all surrounding neighbors and visitors. Indeed, the sheltering of four residents in the property, even when combined with the four family members now residing, would create no more of an impact than that created by many larger, extended families who may reside in similarly sized, or even smaller, homes in the area.

The concern of the neighbors about the condition of Quaker Church Road is noted. However, there is no persuasive evidence, or even a compelling suggestion, that the condition of Quaker Church Road would somehow put the proposed new residents "at risk", or that traffic will increase as a result to such an extent so as to adversely impact Quaker Church Road.

The objections of at least one neighbor to the exterior lighting on the property is also noted. That lighting, however, is for the safety and convenience of the Calderone's, who sometimes arrive home after work, at late hours. The lighting accordingly has nothing to do with this request for a special exception, and the Calderone's right to provide a safe environment for their late night arrivals home.

Furthermore, this special exception, as all special exceptions, is one presumed to be a permitted use in this agricultural zoning district unless there is persuasive evidence produced that its negative impact on the neighborhood would be more pronounced at the particular location proposed than at some other location within the district.

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People's Council of Baltimore County v. Mangione, 85 Md. App. 738 (1991), which involved a request for a special exception for a 240 bed nursing home, clearly defined the type of adverse impact finding which must be made in order to allow the denial of the special exception:

“Specifically, we shall review facts and circumstances upon which the Board could have found that the special exception use and the location proposed would cause an adverse affect upon adjoining and surrounding properties unique and different in kind or degree, than that inherently associated with such use regardless of its location within the zone . . . ”

As indicated above, there is no evidence that the proposed special exception will have any impact, yet alone a negative impact more pronounced here than at some other location in the zone. It is found to be fully compatible with other uses as of right in the Agricultural District. This special exception request, accordingly, meets the general requirements of Section 267-51 of the Harford County Zoning Code.

This, however, is not the end of the analysis. The particular provisions which are applicable to this special exception, and which are contained in Section 267-53F(8), must be examined:

(8) *Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*

(a) *The proposed use shall be located in a single-family detached dwelling.*

The proposed use will be in a large single family dwelling located in an area removed from both the nearest public road and the adjoining residential properties. There will be no significant change to the outward appearance of the dwelling.

(b) *The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*

The minimum lot size in an agricultural district is two acres. The Applicants meet this requirement, having a lot in excess of 10 acres.

(c) *Maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.*

The Applicants request approval for a maximum of four residents only.

(d) *Adequate off-street parking shall be provided.*

According to the Applicants' testimony, and not refuted by any evidence of record, there are seven to eight available parking spaces. Accordingly, it is found that parking will be more than adequate.

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- (e) *Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”*

The dwelling is similar in appearance to other residential properties in the neighborhood. Furthermore, the application is not for the construction of a new dwelling.

Accordingly, it is found the Applicants are fully able to meet the specific requirements of Code Section 267-53F(8).

In addition to meeting the specific applicable regulations for this special exception, the Applicants must also fully comply with the general requirements of Section 267-9I, Limitations, Guides and Standards as follows:

- (1) *The number of persons living or working in the immediate area.*

The subject property is in a relatively rural residential/agricultural area of Harford County. The proposed use is on a large lot, well separated from adjoining neighbors and the nearest County road. There is no evidence that the proposal will adversely impact persons living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The nearest County roads, including Quaker Church Road, are County owned and maintained. While Quaker Church Road has a gravel surface, it is in good condition from the driveway of the subject property to Mill Green Road, which is paved. Sight distances, according to the Department of Planning and Zoning, are very good in both directions. The Department suggests there will be no adverse impact on traffic, and such a suggestion is hereby found to be persuasive as no evidence was presented to the contrary. Nevertheless, the neighbors testified that in inclement weather Quaker Church Road may present difficulties in accessing the subject property. The neighbors implication was that this would prevent emergency service personnel from reaching residents in need of assistance at the subject property. While this may be a legitimate concern, it is a concern which can be expressed about any property, and any resident, along Quaker Church Road or other similarly situated homes within Harford County. It accordingly cannot be used as a reason for the denial of this special exception. Furthermore, given today's state of emergency personnel equipment and training, it would seem to be extraordinarily unlikely that emergency personnel could not reach virtually any area within Harford County, regardless of road conditions.

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- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

This use, being a special exception, has been legislatively determined to be a compatible use within the agricultural district. All Code requirements are met. The proposed use is consistent with the orderly growth of the neighborhood and the community, as it provides a service of some benefit to its target population. The request will have no adverse fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such characteristics have been identified and it is found that such characteristics should not be present or an impact on the community.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Local and State police protection will be available for the subject property. Dublin, Darlington and Whiteford Volunteer Fire Departments will provide primary fire protection and emergency assistance. A company of the Applicants choice will handle trash collection. The Harford County Health Department has determined that the existing well and septic system are adequate to handle the proposed number of residents.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The use is consistent with generally accepted planning practices and principals.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the 2004 Master Plan.

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- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such sensitive environmental features have been identified which should be impacted in any fashion by the proposed use.

- (10) *The preservation of cultural and historic landmarks.*

Not applicable to this request.

CONCLUSION:

It is accordingly recommended that the proposed special exception be granted, subject to the following conditions:

1. The Applicants shall submit a site plan to the Department of Planning and Zoning for the review and approval through the Development Advisory Committee.
2. The approval shall be limited to 4 residents in addition to family members.
3. The Applicants shall obtain all necessary permits and inspections for the use of the dwelling as a personal care boarding home.
4. The approval is for the Applicants only and shall terminate upon sale of the property, or a change in management of the use.

Date: July 8, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on AUGUST 5, 2005.